

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----)
5 VICTORIA MALONE,

6 Plaintiff,

7 vs.

8 TOWN OF CLARKSTOWN, WAYNE BALLARD in his
9 personal and official capacity as
10 Clarkstown Highway Superintendent; FRANK
11 DIZENZO, in his personal and official
12 capacity as Clarkstown Highway
13 Superintendent; ANDREW LAWRENCE, in his
14 personal and official capacity; DAVID
15 SALVO, in his personal and official
16 capacity; ROBERT KLEIN, in his personal
17 and official capacity; TUCKER CONNINGTON,
18 in his personal and official capacity; and
19 BRIAN LILLO, in his personal and official
20 capacity,

21 Defendants.
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24 REMOTE DEPOSITION OF JOHN LUTHER

25 New York, New York

November 17, 2020

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<div>Page 2</div> <div> <p>1</p> <p>2 November 17, 2020</p> <p>3 2:50 p.m.</p> <p>4</p> <p>5 Remote deposition of JOHN</p> <p>6 LUTHER, the witness herein, held</p> <p>7 remotely from New York, New York,</p> <p>8 pursuant to Notice, before Linda</p> <p>9 Salzman, a Notary Public of the</p> <p>10 State of New York.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> </div>	<div>Page 3</div> <div> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 POLLOCK COHEN</p> <p>5 Attorneys for Plaintiff Victoria Malone</p> <p>6 60 Broad Street</p> <p>7 New York, New York 10004</p> <p>8 BY: STEVE COHEN, ESQ.</p> <p>9</p> <p>10 WILSON ELSEER MOSKOWITZ EDELMAN & DECKER</p> <p>11 Attorneys for Defendants Town of</p> <p>12 Clarkstown, Tucker Connington, and</p> <p>13 David Salvo</p> <p>14 1133 Westchester Avenue</p> <p>15 White Plains, New York 10604</p> <p>16 BY: ELIZA SCHEIBEL, ESQ.</p> <p>17</p> <p>18 LAWRENCE A. GARVEY & ASSOCIATES</p> <p>19 Attorneys for Defendant Frank DiZenzo</p> <p>20 235 Main Street</p> <p>21 White Plains, New York 10601</p> <p>22 BY: BRITTANY CORDERO, ESQ.</p> <p>23 LAWRENCE GARVEY, ESQ.</p> <p>24</p> <p>25 A P P E A R A N C E S (continued):</p> </div>
<div>Page 4</div> <div> <p>1</p> <p>2</p> <p>3 McDERMOTT & McDERMOTT ATTORNEYS AT LAW</p> <p>4 Attorneys for Defendant Robert Klein</p> <p>5 293 Route 100</p> <p>6 Somers, New York 10589</p> <p>7 BY: MICHAEL McDERMOTT, ESQ</p> <p>8</p> <p>9</p> <p>10 LYONS McGOVERN</p> <p>11 Attorneys for Defendant Brian Lillo</p> <p>12 399 Knollwood Road</p> <p>13 White Plains, New York 10603</p> <p>14 BY: LISA FANTINO, ESQ</p> <p>15</p> <p>16</p> <p>17 DARREN JAY EPSTEIN ATTORNEY AT LAW</p> <p>18 Attorney for Witnesses Dominic Santulli,</p> <p>19 John Luther, and Denny Friscoe</p> <p>20 254 South Main Street</p> <p>21 New City, New York 10956</p> <p>22 BY: DARREN EPSTEIN, ESQ.</p> <p>23</p> <p>24</p> <p>25</p> </div>	<div>Page 5</div> <div> <p>1</p> <p>2 ALSO PRESENT:</p> <p>3 Helen He, Intern for Pollock Cohen</p> <p>4 Leslie Kahn, Town Attorney, Town of Clarkstown</p> <p>5 Charles Connington, Town of Clarkstown</p> <p>6 Highway Department</p> <p>7 Frank DiZenzo, Clarkstown Highway</p> <p>8 Superintendent</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> </div>

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1 J. Luther
2 opportunity ever to talk with anybody at
3 the Highway Department about this lawsuit?
4 A. No, not specifically.
5 Q. By the way, are you involved
6 with the union?
7 A. Yes, I am.
8 Q. In what role?
9 A. I am currently a delegate with
10 the CSEA, local delegate. Also, I chair
11 the Safety and Health Committee.
12 Q. Okay.
13 A. And I am the shop steward at the
14 Highway Department.
15 Q. Were you ever Tori's union
16 delegate?
17 A. Yes.
18 Q. What does that involve?
19 A. Well, the delegate job is really
20 not that much. I would say the shop
21 steward -- which is maybe what you're
22 getting at.
23 Q. Yes, please.
24 A. Is maybe listening to complaints
25 that people have, events that go on on the

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1 J. Luther
2 mean?
3 MS. SCHEIBEL: Objection.
4 Q. You can answer.
5 A. Unofficially complain would just
6 be gripe about the job, some of the usual
7 BS that goes on down there.
8 Q. Okay. We'll get into some of
9 the usual BS in a few minutes.
10 Have you ever represented Tori
11 in any of her formal grievances?
12 A. I don't believe so, no.
13 Q. Okay. Let's look at what is
14 marked as Plaintiff's Exhibit 1, which is
15 the Amended Complaint. I think your
16 attorney will hand it to you.
17 (Plaintiff's Exhibit No. 1,
18 Amended Complaint, marked for
19 identification, as of this date.)
20 Q. Take a look at paragraph 22,
21 Mr. Luther, okay, and just read it quickly
22 to yourself.
23 A. 22.
24 Q. Paragraph 22, not page 22.
25 A. "Throughout her employment,"

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1 J. Luther
2 job, and then passing it up the chain of
3 command in the union.
4 Q. And did Tori ever complain to
5 you?
6 A. Yes. Yes, she did.
7 Q. When was that?
8 A. There were a few occasions.
9 Specifically, the last one I remember very
10 vividly is the Brian Lillo chain saw.
11 Q. Okay. We'll come back to that
12 in a few minutes. Okay.
13 Any others?
14 A. I'm sure, but you'll have to
15 forgive me if I can't remember them
16 specifically.
17 Q. Did she complain once, twice,
18 ten times to you? What's your estimate?
19 A. Like, officially probably under
20 ten times.
21 Q. How about unofficially?
22 A. Several times.
23 MS. SCHEIBEL: Objection.
24 Q. What does unofficially
25 complain -- what did you take that to

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1 J. Luther
2 that one?
3 MR. EPSTEIN: Yes.
4 A. Okay.
5 Q. Before I move on to that, do you
6 still socialize with Tori outside of work?
7 A. No, I don't really see her on a
8 regular basis.
9 Q. Why is that?
10 A. The majority of the time, I
11 would see her at work and just haven't
12 seen her recently.
13 Q. Okay. Let's take a look at
14 paragraph 22.
15 First sentence, "Throughout her
16 employment with the Department, Ms. Malone
17 was regularly subjected to sexual and
18 gender-based harassment by her peers and
19 supervisors."
20 Would you agree with that
21 statement?
22 MR. McDERMOTT: Objection.
23 MS. FANTINO: Objection.
24 MS. SCHEIBEL: Objection.
25 Q. You can answer.

<p style="text-align: right;">Page 86</p> <p>1 J. Luther</p> <p>2 A. No.</p> <p>3 Q. Do you have nieces?</p> <p>4 A. No.</p> <p>5 Q. Do you know any young women of</p> <p>6 friends of yours?</p> <p>7 MS. SCHEIBEL: Objection.</p> <p>8 Q. Do any of your friends have</p> <p>9 daughters?</p> <p>10 A. Yes.</p> <p>11 Q. Would you want them to work at</p> <p>12 the Clarkstown Highway Department?</p> <p>13 MR. McDERMOTT: Objection.</p> <p>14 MS. SCHEIBEL: Objection.</p> <p>15 A. I wouldn't want my son to work</p> <p>16 there, no.</p> <p>17 Q. Much less a daughter?</p> <p>18 A. Yes.</p> <p>19 MR. McDERMOTT: Objection.</p> <p>20 Q. Did you think Tori had to endure</p> <p>21 offensive conduct?</p> <p>22 MR. McDERMOTT: Objection.</p> <p>23 MS. SCHEIBEL: Objection.</p> <p>24 A. Yes.</p> <p>25 Q. Conduct of a sexual nature?</p>	<p style="text-align: right;">Page 87</p> <p>1 J. Luther</p> <p>2 MS. SCHEIBEL: Objection.</p> <p>3 MR. McDERMOTT: Objection.</p> <p>4 A. At times.</p> <p>5 Q. Do you think that conduct was</p> <p>6 ever severe?</p> <p>7 MS. SCHEIBEL: Objection.</p> <p>8 A. Some of the examples that I gave</p> <p>9 you, yes, were severe.</p> <p>10 Q. Was it pervasive?</p> <p>11 MR. McDERMOTT: Objection.</p> <p>12 MS. SCHEIBEL: Objection.</p> <p>13 A. Pervasive, meaning?</p> <p>14 Q. A lot of it.</p> <p>15 MS. SCHEIBEL: Objection.</p> <p>16 A. There was a lot of it, yes.</p> <p>17 Q. Was it intimidating?</p> <p>18 MS. SCHEIBEL: Objection.</p> <p>19 A. Not to me, no.</p> <p>20 Q. But to Tori?</p> <p>21 MS. SCHEIBEL: Objection.</p> <p>22 A. You'd have to ask her.</p> <p>23 Q. Did you take it as abusive</p> <p>24 towards Tori?</p> <p>25 MS. SCHEIBEL: Objection.</p>
<p style="text-align: right;">Page 88</p> <p>1 J. Luther</p> <p>2 A. Somewhat.</p> <p>3 Q. Ever threatening towards Tori?</p> <p>4 MR. McDERMOTT: Objection.</p> <p>5 MS. SCHEIBEL: Objection.</p> <p>6 A. With the exception of the key</p> <p>7 box and the chain saw, no.</p> <p>8 Q. But those two incidents were</p> <p>9 threatening?</p> <p>10 MS. SCHEIBEL: Objection.</p> <p>11 Q. You may answer.</p> <p>12 A. Those were the only two that I</p> <p>13 actually are aware of that would be, yes.</p> <p>14 Q. I'm sorry. I didn't hear the</p> <p>15 end of the sentence.</p> <p>16 A. Those would be the only two</p> <p>17 incidents that were threatening, I</p> <p>18 believe.</p> <p>19 Q. Do you think Tori was</p> <p>20 discriminated against because of her sex?</p> <p>21 MR. McDERMOTT: Objection.</p> <p>22 MS. SCHEIBEL: Objection.</p> <p>23 A. Yes.</p> <p>24 Q. Do you think that Wayne Ballard</p> <p>25 allowed a hostile work environment to</p>	<p style="text-align: right;">Page 89</p> <p>1 J. Luther</p> <p>2 continue while he was superintendent?</p> <p>3 MS. SCHEIBEL: Objection.</p> <p>4 A. Yes.</p> <p>5 Q. Did he encourage it?</p> <p>6 MS. SCHEIBEL: Objection.</p> <p>7 A. No.</p> <p>8 Q. Did he contribute to it?</p> <p>9 MS. SCHEIBEL: Objection.</p> <p>10 A. Not that I personally saw.</p> <p>11 Q. Did Frank DiZenzo in your</p> <p>12 opinion allow a hostile work environment</p> <p>13 to continue while he was superintendent?</p> <p>14 MS. SCHEIBEL: Objection.</p> <p>15 A. The conduct never changed.</p> <p>16 Q. So is that a yes, do you think?</p> <p>17 A. Yes.</p> <p>18 Q. Did he encourage it?</p> <p>19 MS. SCHEIBEL: Objection.</p> <p>20 A. I never personally witnessed him</p> <p>21 encourage it, no.</p> <p>22 Q. Did he contribute to it?</p> <p>23 MS. SCHEIBEL: Objection.</p> <p>24 A. Again, I never saw him</p> <p>25 personally contribute to it.</p>

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1 J. Luther

2 Q. Did he contribute to it with the

3 Go Girl?

4 MS. SCHEIBEL: Objection.

5 A. Again, I only heard about that

6 incident second hand.

7 Q. Did Tucker Connington allow a

8 hostile work environment to continue while

9 he was deputy?

10 MS. SCHEIBEL: Objection.

11 A. Yes.

12 Q. Did he encourage it?

13 MS. SCHEIBEL: Objection.

14 A. No.

15 Q. Did he contribute to it?

16 MS. SCHEIBEL: Objection.

17 A. No.

18 Q. Do you think over time the

19 individual slights, slurs, comments,

20 gestures, incidents towards Tori added up

21 to a serious situation?

22 MR. McDERMOTT: Objection.

23 MS. SCHEIBEL: Objection.

24 A. Yes.

25 Q. Did you see it have any effect

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1 J. Luther

2 may have questions, but thank you.

3 THE WITNESS: Could I request a

4 break?

5 MR. COHEN: Yes.

6 Does anybody have questions for

7 him?

8 MS. FANTINO: Yes, Lisa Fantino

9 will.

10 MS. SCHEIBEL: This is Eli. I

11 might have one or two questions.

12 (Thereupon, a recess was taken

13 and the proceedings continued as

14 follows:)

15 BY MR. COHEN:

16 Q. Two things, Mr. Luther. I had

17 one other question for you.

18 We wanted to clarify which Chris

19 you were referring to in the last -- which

20 Chris were you referring to in the crew?

21 A. In my current crew?

22 Q. No, when Bob Gaglione was with

23 you.

24 A. Rob Gaglione is in my current

25 crew, so I would assume you were talking

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1 J. Luther

2 on her?

3 MS. SCHEIBEL: Objection.

4 A. Not until the chain saw incident

5 and --

6 MS. FANTINO: Objection.

7 (Whereupon, the requested

8 portion was read back by the court

9 reporter.)

10 A. Yes, not until the chain saw

11 incident. I think that was the final

12 straw, though.

13 Q. In what way the final straw?

14 MS. FANTINO: Objection.

15 MS. SCHEIBEL: Objection.

16 A. Well, I can remember her phone

17 call made to me that day that it happened

18 and she said she was sick of it and she

19 was not going to take it anymore.

20 Q. Is there anything else you would

21 like to add to what we've talked about

22 today?

23 A. No.

24 MR. COHEN: Then I have no more

25 questions and I thank you. Now others

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1 J. Luther

2 about Chris Frank.

3 MR. COHEN: Chris Frank.

4 Eli, you win. You got it right.

5 Q. So I have one other question for

6 you, Mr. Luther.

7 Okay?

8 A. Okay.

9 Q. You said you wouldn't even want

10 a son to work in the Highway Department.

11 Why is that?

12 A. It's just not a good

13 environment. I would hope they would do

14 something better with their lives.

15 Q. Why is it not a good

16 environment?

17 A. The clickiness of the Highway

18 Department was one of the things I've

19 never really been able to grasp.

20 You have certain groups of

21 friends and the comments that are made,

22 innuendo, it's a little tough to work

23 around constantly.

24 Q. Is it a place that shows a lot

25 of favoritism?